

GENERAL ORDINANCE NO. G- *Willbren*

AN ORDINANCE AMENDING CHAPTER 37,
SECTION 37.15 OF THE CITY OF FORT
WAYNE, INDIANA, CODE OF ORDINANCES.

NOW, THEREFORE, BE IT ORDAINED BY THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 37, Section 37.15 of
the City of Fort Wayne Code of Laws be amended to add
parts (C) and (D) as follows:

37:15 PURCHASING AGENT; DUTIES AND POWERS

(C) It is hereby established, pursuant to I.C. 36-1-9-3, that bids will be received and contracts let for each class of materials to be purchased annually which exceeds seventy-five thousand dollars (\$75,000); or total annual rental payments exceeding seventy-five thousand dollars (\$75,000.00).

(D) Pursuant to I.C. 36-1-9-4, the purchasing agent, when purchasing or leasing materials whose total price of each line or class annually or annual rental payment is at least twenty-five thousand dollars (\$25,000.00) and less than seventy-five thousand dollars (\$75,000.00) must invite quotes from at least three (3) persons known to deal that line or class of material by mailing them a copy of the specifications not less than seven (7) days before the time fixed for receiving quotes.

SECTION 2. That this Ordinance shall remain in
full force and effect from and after its passage and any
and all necessary approval by the Mayor.

Clatus R Edmonds

APPROVED AS TO FORM AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Edmonds,
seconded by _____, and duly adopted, read the second time by
title and referred to the Committee on Recreation (and the
City Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Common Council Conference Room 128, City County
Building, Fort Wayne, Indiana, on _____, the _____ day
of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 6-27-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK
Michael E. Helmke
MICHAEL E. HELMKE, MAYOR

Read the third time in full and on motion by _____,
seconded by _____, and duly adopted, placed on its passage.
PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	_____	_____	_____	_____
BRADBURY	_____	_____	_____	_____
EDMONDS	_____	_____	_____	_____
GiaQUINTA	_____	_____	_____	_____
HENRY	_____	_____	_____	_____
LONG	_____	_____	_____	_____
LUNSEY	_____	_____	_____	_____
RAVINE	_____	_____	_____	_____
SCHMIDT	_____	_____	_____	_____
TALARICO	_____	_____	_____	_____

DATED: _____
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. _____
on the _____ day of _____, 19____

ATTEST:

(SEAL)

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the _____ day of _____, 19____,
at the hour of _____ o'clock _____ M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____,
19____, at the hour of _____ o'clock _____ M., E.S.T.

PAUL HELMKE, MAYOR

BILL NO. G-95-06-20

REPORT OF THE COMMITTEE ON
REGULATIONS
CLETUS R. EDMONDS - REBECCA J. RAVINE - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AMENDING CHAPTER 37,
SECTION 37.15 OF THE CITY OF FORT WAYNE, INDIANA, CODE OF ORDINANCES
INCREASE THE BID LEVEL FOR PURCHASING DEPT

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
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_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATED: 7-11-95

Sandra E. Kennedy
City Clerk

CHAPTER 37: FINANCE AND REVENUE

Section

General Provisions

37.01 Community Investment Program

Purchasing

- 37.15 Purchasing Agent; duties and powers
- 37.16 Improper purchases
- 37.17 Approval or ratification required
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- 37.20 Exception

City Funds

- 37.30 City Sinking Fund
- 37.31 Board of Park Commissioners Building and Sinking Fund
- 37.32 Special nonreverting funds for park purposes
- 37.33 Self-Insurance Fund
- 37.34 Establishing insurance fund
- 37.35 Headwaters capital projects fund
- 37.36 Economic development income tax fund

GENERAL PROVISIONS

§ 37.01 COMMUNITY INVESTMENT PROGRAM.

(A) The city's Community Investment Program is hereby authorized and the city is further empowered and authorized to use funds from the Community Trust as part of the program. In addition, the Board of Trustees of the City Community Trust is empowered and authorized to make investments from City Community Trust Funds with respect to the Community Investment Program.

(B) Each investment made under the Community Investment Program from the City Community Trust funds shall be first approved, in each instance, by the Board of Trustees of the City Community Trust, and

then must be all approved in ordinance form by the Common Council. In determining whether to approve an investment, the Board of Trustees shall:

(1) Exercise reasonable and prudent business care as to the making of such an investment;

(2) Keep in mind the purpose of the community investment sums to assure, as best as is possible, no diminution of the trust corpus;

(3) Make investments only for property within the city limits that facilitate job creation and/or cause private investments to occur where such investments would not otherwise happen and/or add to the tax base; and

(4) Determine the nature and extent of each investment; the terms and conditions of same; and the type of collateral security required.

(C) The Board of Trustees shall have access to and benefit of, in the making of its determinations hereunder, financial and legal advice.

('74 Code, § 11-3) (Ord. G-11-86, passed 3-11-86)

PURCHASING

§ 37.15 PURCHASING AGENT; DUTIES AND POWERS.

(A) There is hereby established pursuant to IC 36-4-9.4 the Department of Purchasing. The head of the Purchasing Department shall be the Purchasing Agent for the city and shall be appointed by the Mayor. ('74 Code, § 11-1(a))

(B) The head of the Purchasing Department shall:

(1) Assume the duties, powers and responsibilities assigned to a Purchasing Agent in IC 36-1-9 and to a disposing agent in IC 36-1-11.

(2) Act as the sole agent in obtaining

materials, supplies, equipment or contractual services for all city departments and divisions, city-operated utility, or any board, commissioner, officer or person otherwise empowered by law to make purchases of materials, equipment, goods, supplies and property of whatever description, except the Board of Works for the city. Any such department or division shall requisition such materials, supplies, equipment or services from the Purchasing Agent who shall, upon determining that appropriations are available for such purposes, acquire the items requisitioned in accordance with public purchase law. All contracts of purchase shall be made in the name of the city department or division and be subject to the approval of the department or division.

(3) Establish such purchasing and contractual procedures as may best be suited to obtain the greatest economic value to the city.

(4) Prepare specifications and notice to bidders and see that the required notices are published, where bidding and publication of notice are required by law.

(5) Cooperate and consult with the controller for the purpose of ensuring that adequate funds are available prior to making necessary purchases and acquisitions to assure they are within the limits of the budget appropriations of the department or division in need of the material.

(6) Act as the agent of any executive department to sell or exchange any personal property ordered to be sold by a city department or division in accordance with procedures prescribed by law.

('74 Code, § 11-1(b))

(Ord. G-10-80, passed 6-24-80; Am. Ord. G-17-85, passed 6-25-85; Am. Ord. G-28-89, passed 12-26-89; Am. Ord. G-13-93, passed 3-23-93)

§ 37.16 IMPROPER PURCHASES.

Any purchase made in violation of this section or the purchasing procedures established by the Purchasing Department shall be null and void.

('74 Code, § 11-1(c)) (Ord. G-10-80, passed 6-24-80; Am. Ord. G-17-85, passed 6-25-85; Am. Ord. G-28-89, passed 12-26-89)

§ 37.17 APPROVAL OR RATIFICATION REQUIRED.

Whenever the city, including any city-owned or

-operated utility, makes any purchase, the contract for which purchase is not awarded to the lowest bidder, or is awarded to a single bidder, enters into any lease, or executes a contract which exceeds \$100,000 per year for the purpose of providing services to the city or any city-owned or -operated utility, other than contracts for consultants pursuant to § 38.03 of this code, all such purchases and/or leases or such contracts shall be entered into with the prior approval or subsequent ratification by the Common Council of the city by ordinance or resolution duly passed by the Common Council and approved by the Mayor. All such purchases and/or leases and such contracts entered into without such prior approval or subsequent ratification shall be null and void.

('74 Code, § 11-1(d)) (Ord. G-10-80, passed 6-24-80; Am. Ord. G-17-85, passed 6-25-85; Am. Ord. G-28-89, passed 12-26-89; Am. Ord. G-47-92, passed 10-27-92)

§ 37.18 EMERGENCY PURCHASES.

Upon declaration of an emergency, the City Purchasing Agent may purchase repairs and purchase or lease materials without giving notice, receiving bids or obtaining Council approval, so long as the procedures outlined in IC 36-1-9-11 are followed.

('74 Code, § 11-1(f)) (Ord. G-10-80, passed 6-24-80; Am. Ord. G-17-85, passed 6-25-85; Am. Ord. G-28-89, passed 12-26-89)

§ 37.19 COUNCIL APPROVAL REQUIRED FOR PURCHASES AND/OR LEASES OF REAL ESTATE.

Whenever the civil city or any of its utilities desires to purchase or lease (as lessee), or acquire by gift any real estate, such purchase and/or lease or acquisition shall not be consummated and/or entered into without the prior approval or subsequent ratification by ordinance or resolution duly passed by the Common Council of the City of Fort Wayne, Indiana, and approval of the Mayor. Any purchases and/or leases or acquisition of real estate consummated without such prior approval or subsequent ratification shall be null and void.

('74 Code, § 11-2) (Ord. G-15-85, passed 6-25-85)

§ 37.20 EXCEPTION.

Materials may be purchased in accordance with

First Regular Session 109th General Assembly (1995)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in this style type or this style type reconciles conflicts between statutes enacted by the 1994 General Assembly.

HOUSE ENROLLED ACT No. 1398

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-16-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) This chapter does not apply to contractors or subcontractors performing public work for Purdue University on agricultural or forestry land owned or occupied by the university and used by it for educational or research purposes if the cost of the work is estimated to be less than fifty thousand dollars (\$50,000), and the conditions prescribed for that work in IC 5-16-1-1 are met.

(b) Except as provided in IC 36-1-14.3, this chapter does not apply to a person that has entered into an operating agreement with the state, a municipal corporation, or another political subdivision for the management or operation of a public facility under IC 36-1-14.3.

SECTION 2. IC 36-1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in subsections (b) through (i), this chapter applies to purchases or leases of materials by:

(1) political subdivisions; and



(2) agencies of political subdivisions; for which payment is to be made by the political subdivision or agency of the political subdivision from a public fund.

(b) This chapter does not apply to purchases or leases made by the following:

- (1) A local hospital authority under IC 5-1-4.
- (2) A municipally owned utility under IC 8-1.5.
- (3) Hospitals organized or operated under IC 16-22-1 through IC 16-22-5, IC 16-23-1, or IC 16-24-1.
- (4) A library board under IC 20-14-3-14(b).
- (5) A local housing authority under IC 36-7-18.
- (6) Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.
- (7) A person paying for a purchase or lease with funds other than public funds.
- (8) A person that has entered into an agreement with a political subdivision or an agency of a political subdivision under IC 36-1-14.3.

(c) Each month, the officer in charge of repair and maintenance of county highways may, with the approval of the county executive and without receiving bids or giving notice, lease or purchase materials not exceeding in value the following amounts for each county classification:

- Class 1-2 \$2,000
- Class 3-6 \$1,750
- Class 7-9 \$1,500

Counties shall be classified according to the formula in IC 33-13-12-6.

(d) The purchasing agent may purchase or lease parts for machinery or equipment that can only be procured from the manufacturer of the machinery or equipment without giving notice or receiving bids.

(e) The purchasing agent may purchase materials from a nonprofit corporation for persons with severe disabilities under IC 16-32-2-8.

(f) This chapter does not apply to a purchase or lease made by a political subdivision or an agency of a political subdivision with a public utility if the purchase or lease price is a negotiated price that considers the results of two (2) independent appraisals, one (1) that the political subdivision or agency shall obtain and one (1) that the public utility shall obtain.

(g) This chapter does not apply to the purchase of petroleum



products by an airport authority under IC 8-22-3 or a board of aviation commissioners under IC 8-22-2 if the petroleum products are for resale to the general public.

(h) This chapter does not apply to the initial purchase or lease of software if that software:

- (1) may only be procured directly from the software's developer; and
- (2) is the only available software application that will satisfy the political subdivision's or agency's demonstrated need.

(i) Except as provided in subsection (j), this chapter does not apply to the purchase of additional hardware or software that will supplement an existing mainframe computer system or mini-mainframe computer system of a political subdivision or an agency if:

- (1) the existing computer system was purchased through a competitive bidding procedure;
- (2) the additional hardware or software:
 - (A) may only be procured directly from the developer or manufacturer of the software or hardware; and
 - (B) is the only software or hardware that will satisfy the demonstrated needs of the political subdivision or agency; and

- (3) the existence of both conditions described in subdivision (2) is recorded in the minutes of the legislative body of the political subdivision or governing body of the agency, if any.

(j) As used in this subsection, "peripheral hardware" includes printers and terminals. The exemption from the coverage of this chapter that is provided in subsection (i) does not apply to the purchase of peripheral hardware.

(k) If a person has entered into an agreement under IC 36-1-14.3, the provisions of this chapter do not apply.

SECTION 3. IC 36-1-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in The following definitions apply throughout this chapter:

- (1) "Operating agreement" has the meaning set forth in IC 36-1-14.3-4.
- (2) "Person" means any association, corporation, limited liability company, fiduciary, individual, joint venture, partnership, sole proprietorship, or any other legal entity.
- (3) "Public fund" means all funds that are:

- (A) derived from the established revenue sources of a political subdivision or an agency of a political



subdivision; and

(B) deposited in a general or special fund of a municipal corporation, or another political subdivision or agency of a political subdivision. The term does not include funds received by any person managing or operating a public facility under an authorized operating agreement under IC 36-1-14.3.

(4) "Purchasing agent" means the board or officer having the power to award contracts for the purchase or lease of materials for a political subdivision or an agency.

(5) "Specifications" means a description of the physical characteristics, functional characteristics, or nature of materials and may include a description of a requirement for inspecting, testing, or preparing materials for delivery.

SECTION 4. IC 36-1-9-3, AS AMENDED BY SEA 70-1995, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1995]: Sec. 3. (a) A purchasing agent who is purchasing or leasing materials must comply with this section whenever the total price of each line or class of materials to be purchased annually or total annual rental payments are:

(1) at least seventy-five thousand dollars (\$75,000) if the purchasing agent is acting on behalf of:

(A) a consolidated city or second class city; or

(B) a county containing a consolidated city or second class city;

(2) at least fifty thousand dollars (\$50,000) if the purchasing agent is acting on behalf of:

(A) a third class city or town with a population of more than five thousand (5,000); or

(B) a county containing a third class city or town with a population of more than five thousand (5,000); or

(3) at least twenty-five thousand dollars (\$25,000) if the purchasing agent is acting on behalf of a political subdivision or an agency not described in subdivision (1) or (2).

(1) the total price of each line or class of materials to be purchased annually exceeds twenty-five thousand dollars (\$25,000); or

(2) total annual rental payments exceed twenty-five thousand dollars (\$25,000).

(b) Except as provided by subsection (c), a purchasing agent shall prepare specifications describing the kind and quantity of the



materials needed and setting forth the requirement specified in section 8.5 of this chapter. The purchasing agent shall avoid specifications that might unduly limit competition. The specifications may include one (1) or more of the following conditions:

- (1) That bids will be received and contracts let, separately, for each line or class of materials.
- (2) That bids will be received and contracts let for the purchase or lease of an unspecified number of items at a fixed price per unit.
- (3) That bids will be evaluated on the basis of such factors as reliability, productivity, and the cost of maintenance and services.

(c) The following procedure may be used in lieu of subsection (b) when the purchasing agent makes a written determination that the use of subsection (b) is not feasible, and authorization is granted by the executive of the political subdivision or agency:

- (1) Proposals to develop specifications shall be solicited through a request for proposals, which must include the following:

(A) The factors or criteria that will be used in evaluating the proposals.

(B) A statement concerning the relative importance of price and the other evaluation factors.

(C) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(D) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

(E) A statement that the proposal must comply with any requirement under section 8.5 of this chapter.

- (2) Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

(3) As provided in the request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

(4) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

- (5) After the procedures outlined in this subsection have been



completed, the resulting specifications shall be let for bid under this section. Access to the proposals under this chapter shall be determined under IC 36-1-14.3-11.

(d) The notice of the time and place for receiving the bids shall be given by publication in accordance with IC 5-3-1. A bidder may not be required to submit a bid before the meeting at which bids are to be received.

(e) Electronic bids may be accepted by a political subdivision if the political subdivision receiving the bid:

- (1) indicates in the notice issued under subsection (d) the procedure for transmitting the electronic bid; and
- (2) receives the electronic bid on a fax machine or system with a security feature that protects the content of an electronic bid to the same extent the content of a bid that is not transmitted by fax machine is protected.

(f) All meetings for receiving bids must be open to the public. The bids shall be opened publicly and read aloud at the time and place designated in the notice and not before.

(g) All plans and specifications shall be kept in a place available for public inspection, which shall be specified in the notice.

(h) Except as provided in subsections (m) through (n), the purchasing agent shall, after a satisfactory bid is received, award a contract to the lowest responsible and responsive bidder for each line or class of materials required.

(i) If a contract awarded under subsection (h) is not awarded to the lowest bidder, the factors used to:

- (1) determine which bidder is the lowest responsible and responsive bidder; and
- (2) justify that award;

must be stated in the minutes or memoranda at the time the award is made. A copy of the minutes or memoranda must be kept available for public inspection.

(j) In determining whether a bidder is responsive, a purchasing agent may consider the following factors:

- (1) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.
- (2) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
- (3) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.



(k) In determining whether a bidder is a responsible bidder, a purchasing agent may consider the following factors:

- (1) The ability and capacity of the bidder to provide the materials.
- (2) The integrity, character, and reputation of the bidder.
- (3) The competency and experience of the bidder.

(l) The purchasing agent may reject all bids and ask for new bids. If no valid bids are received for an item, the purchasing agent may purchase or lease that item on the open market without further advertisement for bids.

(m) Notwithstanding subsection (h), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if:

- (1) the specifications allow for bids to be based upon service to specific geographic areas; and
- (2) the contracts are awarded by geographic area.

The geographic areas do not need to be described in the specifications.

(n) A school corporation shall, after a satisfactory bid is received, award a contract to the lowest and the best responsible and responsive bidder in the opinion of the school corporation for each line or class of materials required. However, if a contract awarded under this subsection is not awarded to the lowest bidder:

- (1) the factors used to justify the award must be stated in the minutes or memoranda at the time the award is made; and
- (2) a copy of the minutes or memoranda must be kept available for public inspection.

SECTION 5. IC 36-1-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A purchasing agent who is purchasing or leasing materials must comply with this section whenever the total price of each line or class of materials to be purchased annually or total annual rental payments is:

- (1) at least twenty-five thousand dollars (\$25,000) and less than seventy-five thousand dollars (\$75,000), if the purchasing agent is acting on behalf of:
 - (A) a consolidated city or second class city; or
 - (B) a county containing a consolidated city or second class city; or
- (2) at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000) if the purchasing agent is acting on behalf of:



(A) a third class city or town with a population of more than five thousand (5,000); or

(B) a county containing a third class city or town with a population of more than five thousand (5,000).

total price of each line or class of materials to be purchased annually; is twenty-five thousand dollars (\$25,000) or less of the

annual rental payment on a lease of materials;

is twenty-five thousand dollars (\$25,000) or less.

(b) A purchasing agent acting under this section must comply with one (1) of the following procedures:

(1) The A purchasing agent may acting under this section must invite quotes from at least three (3) persons known to deal in the lines or classes of materials by mailing them a copy of the specifications for the materials and of section 8.5 of this chapter not less than seven (7) days before the time fixed for receiving quotes. If the purchasing agent receives quotes the agent shall, after a satisfactory quote is received, award the contract to the lowest responsible and responsive quoter for each line or class of materials required. The purchasing agent may reject all quotes and, if no valid quotes are received for an item, purchase or lease that item on the open market without further invitations for quotes.

(2) The purchasing agent may purchase or lease the materials in the open market without inviting or receiving quotes.

SECTION 6. IC 36-1-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) This section applies whenever the:

(1) total price of each line or class of materials to be purchased annually; or

(2) annual rental payment on a lease of materials;

is less than twenty-five thousand dollars (\$25,000).

(b) The purchasing agency may:

(1) comply with the provisions of section 4 of this chapter;

(2) purchase or lease the materials in the open market without inviting or receiving quotes; or

(3) adopt other reasonable procedures.

SECTION 7. IC 36-1-11-1, AS AMENDED BY HEA 1463-1995, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1995]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to the disposal of property by:



- (1) political subdivisions; and
- (2) their agencies.
- (b) This chapter does not apply to the following:
 - (1) The disposal of property under an urban homesteading program under IC 36-7-17.
 - (2) The lease of school buildings under IC 21-5.
 - (3) The sale of land to a lessor in a lease-purchase contract under IC 36-1-10.
 - (4) The disposal of property by a redevelopment commission established under IC 36-7.
 - (5) The leasing of property by a board of aviation commissioners established under IC 8-22-2 or an airport authority established under IC 8-22-3.
 - (6) The disposal of a municipally owned utility under IC 8-1.5.
 - (7) The sale or lease of property by a unit to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit corporation.
 - (8) The disposal of property by a hospital organized or operating under IC 16-22-1 through IC 16-22-5, IC 16-23-1, or IC 16-24-1.
 - (9) The sale or lease of property acquired under IC 36-7-13 for industrial development.
 - (10) The sale, lease, or disposal of property by a local hospital authority under IC 5-1-4.
 - (11) The sale or other disposition of property by a county or municipality to finance housing under IC 5-20-2.
 - (12) The disposition of property by a soil and water conservation district under IC 14-32.
 - (13) The sale of surplus or unneeded property by the board of trustees of the health and hospital corporation under IC 16-22-8.
 - (14) The disposal of personal property by a library board under IC 20-14-3-4(c).
 - (15) The sale or disposal of property by the historic preservation commission under IC 36-7-11.1.
 - (16) The disposal of an interest in property by a housing authority under IC 36-7-18.
 - (17) The disposal of property under IC 36-9-37-26.



(18) The disposal of property used for park purposes under IC 36-10-7-8.

(19) The disposal of textbooks that will no longer be used by school corporations under IC 20-10.1-10.

(20) The disposal of residential structures or improvements by a municipal corporation without consideration to:

(A) a governmental entity; or

(B) a nonprofit corporation that is organized to expand the supply or sustain the existing supply of good quality, affordable housing for residents of Indiana having low or moderate incomes.

(21) The disposal of historic property without consideration to a nonprofit corporation whose charter or articles of incorporation allows the corporation to take action for the preservation of historic property. As used in this subdivision, "historic property" means property that is:

(A) listed on the National Register of Historic Places; or

(B) eligible for listing on the National Register of Historic Places, as determined by the division of historic preservation and archeology of the department of natural resources.

(22) The disposal of real property without consideration to:

(A) a governmental agency; or

(B) a nonprofit corporation that exists for the primary purpose of enhancing the environment;

when the property is to be used for compliance with a permit or an order issued by a federal or state regulatory agency to mitigate an adverse environmental impact.

(23) The disposal of property to a person under an agreement between the person and a political subdivision or an agency of a political subdivision under IC 36-1-14.3.

SECTION 8. IC 36-1-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in The following definitions apply throughout this chapter:

(1) "Disposal" means sale, exchange, transfer, or lease of property.

(2) "Disposing agent" means the board or officer of a political subdivision or agency having the power to award contracts for which public notice is required, with respect to property of the political subdivision or agency.

(3) "Key number" has the meaning set forth in IC 6-1.1-1-8.5.

(4) "Operating agreement" has the meaning set forth in



IC 36-1-14.3-4.

(5) "Person" means any association, corporation, limited liability company, fiduciary, individual, joint venture, partnership, sole proprietorship, or any other legal entity.

(6) "Property" means all:

(A) personal property, fixtures, furnishings, inventory, and equipment; and

(B) real property;

to be included in a disposal.

(7) "Tract" has the meaning set forth in IC 6-1.1-1-22.5.

SECTION 9. IC 36-1-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) This section does not apply to the disposal of real property under section 5, 5.5, or 8 of this chapter.

(b) Disposal of real property under this chapter is subject to the approval of:

(1) the executive of the political subdivision or agency; or

(2) the fiscal body of the political subdivision or agency, if there is no executive.

The executive or fiscal body may not approve a disposal of property without conducting a public hearing after giving notice under IC 5-3-1. However, in a municipality the executive shall designate a board or commission of the municipality to give notice, conduct the hearing, and notify the executive of its recommendation.

(c) In addition, the fiscal body of a unit must approve:

(1) every sale of real property having an appraised value of ten fifty thousand dollars (~~\$10,000~~) (\$50,000) or more;

(2) every lease of real property for which the total annual rental payments will be three twenty-five thousand dollars (~~\$3,000~~) (\$25,000) or more; and

(3) every transfer of real property under section 14 or 15 of this chapter.

SECTION 10. IC 36-1-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The following procedure may be used instead of that in section 10 of this chapter if the disposing agent makes a written determination (which must include the disposing agent's reasons) that the use of section 10 of this chapter is not feasible, and authorization to use this procedure is granted by the executive of the political subdivision or agency:

(1) Proposals to develop specifications shall be solicited through a request for proposals, which must include:

(A) the factors or criteria that will be used in evaluating



the proposals, including a statement that:

- (i) the property may not be leased to a person who is ineligible under section 16 of this chapter; and
- (ii) a proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

(B) a statement concerning the relative importance of price and the other evaluation factors;

(C) a statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility; and

(D) a statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(2) Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

(3) As provided in the request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(4) Eligible offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

(5) After the procedures outlined in this section have been completed, the disposing agent shall make a determination as to the most appropriate response to the request for proposals and shall dispose of the subject property in accordance with that response.

(6) Access to the proposals under this chapter shall be determined in accordance with the provisions of IC 36-1-14.3-11.

(7) The person submitting the successful proposal is not responsible for the requirements set forth in IC 36-1-9 with regard to the purchase of materials if the purchase of materials was included within the proposal or the materials are not paid for with public funds.

SECTION 11. IC 36-1-11-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. If property disposed of under this chapter is to be reconveyed or automatically returned



to the political subdivision or an agency of a political subdivision that disposed of the property, the terms of the reconveyance or return shall be as agreed to before the disposal. If the terms of the reconveyance are not set forth before the disposal, the political subdivision shall obtain at least two (2) appraisals and pay not more than the average of the two (2) appraisals.

SECTION 12. IC 36-1-12-1, AS AMENDED BY P.L.1-1994, SECTION 173, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in subsections (b), (c), (d), and (e), this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a school corporation may participate in a utility energy efficiency program or may enter into a guaranteed energy savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 36-1-14.3.

SECTION 13. IC 36-1-12-1.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.2. As used in The following definitions apply throughout this chapter:

- (1) "Board" means the board or officer of a political subdivision or an agency having the power to award contracts for public work.
- (2) "Contractor" means a person who is a party to a public work contract with the board.
- (3) "Subcontractor" means a person who is a party to a



contract with the contractor and furnishes and performs labor on the public work project. The term includes material men who supply contractors or subcontractors.

(4) "Escrowed income" means the value of all property held in an escrow account over the escrowed principal in the account.

(5) "Escrowed principal" means the value of all cash and securities or other property placed in an escrow account.

(6) "Operating agreement" has the meaning set forth in IC 36-1-14.3-4.

(7) "Person" means any association, corporation, limited liability company, fiduciary, individual, joint venture, partnership, sole proprietorship, or any other legal entity.

(8) "Property" means all:

(A) personal property, fixtures, furnishings, inventory, and equipment; and

(B) real property.

(9) "Public fund" means all funds that are:

(A) derived from the established revenue sources of a political subdivision or an agency of a political subdivision; and

(B) deposited in a general or special fund of a municipal corporation, or another political subdivision or agency of a political subdivision. The term does not include funds received by any person managing or operating a public facility under a duly authorized operating agreement under IC 36-1-14.3.

(10) "Retainage" means the amount to be withheld from a payment to the contractor or subcontractor until the occurrence of a specified event.

(11) "Specifications" means a description of the physical characteristics, functional characteristics, extent, or nature of any public work required by the board.

(12) "Substantial completion" refers to the date when the construction of a structure is sufficiently completed, in accordance with the plans and specifications, as modified by any complete change orders agreed to by the parties, so that it can be occupied for the use for which it was intended.

SECTION 14. IC 36-1-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 36-1-9



and perform any public work, by means of its own work force, without awarding a contract whenever the cost of that public work project is estimated to be less than ~~seventy-five one hundred thousand dollars (\$75,000)~~, (\$100,000). Before a board may perform any work under this section by means of its own work force, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes the actual cost of materials, labor, equipment, rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project.

(b) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications.

(c) A board of aviation commissioners or an airport authority board may purchase or lease materials in the manner provided in IC 36-1-9 and perform any public work by means of its own work force and owned or leased equipment, in the construction, maintenance, and repair of any airport roadway, runway, taxiway, or aircraft parking apron whenever the cost of that public work project is estimated to be less than fifty thousand dollars (\$50,000).

(d) Municipal and county hospitals must comply with this chapter for all contracts for public work that are financed in whole or in part with cumulative building fund revenue, as provided in section 1(c) of this chapter. However, if the cost of the public work is estimated to be less than fifty thousand dollars (\$50,000), as reflected in the board minutes, the hospital board may have the public work done without receiving bids, by purchasing the materials and performing the work by means of its own work force and owned or leased equipment.

(e) If a public works project involves a structure, an improvement, or a facility under the control of a department (as defined in IC 4-3-19-2(2)), the department may not artificially divide the project to bring any part of the project under this section.

SECTION 15. IC 36-1-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:



twenty-five thousand dollars (\$25,000) or more.

- (1) at least seventy-five thousand dollars (\$75,000) in:
 - (A) a consolidated city or second class city; or
 - (B) a county containing a consolidated city or second class city;
- (2) at least fifty thousand dollars (\$50,000) in:
 - (A) a third class city or town with a population of more than five thousand (5,000); or
 - (B) a county containing a third class city or town with a population of more than five thousand (5,000); or
- (3) at least twenty-five thousand dollars (\$25,000) in a political subdivision or an agency not described in subdivision (1) or (2).
- (b) The board must comply with the following procedure:
 - (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
 - (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
 - (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.
 - (4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.
 - (5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board, but it may not be more than six (6) weeks.
 - (6) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.
 - (7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for



receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before.

(8) Except as provided in subsection (c), the board shall:

- (A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or
- (B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

(10) In determining whether a bidder is responsive, the board may consider the following factors:

- (A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.
- (B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
- (C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

- (A) The ability and capacity of the bidder to perform the work.
- (B) The integrity, character, and reputation of the bidder.
- (C) The competence and experience of the bidder.

(12) The board shall require the bidder to submit an affidavit:

- (A) that the bidder has not entered into a combination or agreement:
 - (i) relative to the price to be bid by a person;
 - (ii) to prevent a person from bidding; or
 - (iii) to induce a person to refrain from bidding; and
- (B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas



and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

SECTION 16. IC 36-1-12-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.7. (a) This section applies whenever a public work project is estimated to cost:

(1) at least twenty-five thousand dollars (\$25,000) and less than seventy-five thousand dollars (\$75,000) in:

(A) a consolidated city or second class city; or

(B) a county containing a consolidated city or second class city; or

(2) at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000) in:

(A) a third class city or town with a population of more than five thousand (5,000); or

(B) a county containing a third class city or town with a population of more than five thousand (5,000).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) The board shall award the contract for the public work to the lowest responsible and responsive quote.

(4) The board may reject all quotes submitted.

SECTION 17. IC 36-1-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) This section applies whenever a public work project is estimated to cost less than twenty-five thousand dollars (\$25,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under ~~subsection (b)~~ subsection (b) or (c).

(b) The board ~~may~~ **must** proceed under the following provisions:



(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

(5) If the board rejects all quotes under subdivision (4) of this section, the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease materials in the manner provided in IC 36-1-9 and perform the public work by means of its own work force without awarding a public work contract.

(f) Before the board may perform any work under this section by means of its own work force, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

(g) This subsection applies to local boards of aviation commissioners operating under IC 8-22-2 and local airport authorities operating under IC 8-22-3. If the contract is to be awarded by a board to which this subsection applies, or to a designee



of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required. The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~) (\$50,000) to the airport personnel in charge of airport public works projects.

SECTION 18. IC 36-1-12-13.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.1. (a) This section applies to contracts for public work only if the cost of the public work is estimated to be more than ~~seventy-five~~ one hundred thousand dollars (~~\$75,000~~). (\$100,000).

(b) The contractor shall execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price. The payment bond is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services.

(c) The payment bond shall be deposited with the board. The payment bond must specify that:

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
- (2) a defect in the public work contract; or
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety. The surety of the payment bond may not be released until one (1) year after the board's final settlement with the contractor.

(d) A person to whom money is due for labor performed,



material furnished, or services provided shall, within sixty (60) days after the completion of the labor or service, or within sixty (60) days after the last item of material has been furnished, file with the board signed duplicate statements of the amount due. The board shall forward to the surety of the payment bond one (1) of the signed duplicate statements. However, failure of the board to forward a signed duplicate statement does not affect the rights of a person to whom money is due. In addition, a failure to forward the statement does not operate as a defense for the surety.

(e) An action may not be brought against the surety until thirty (30) days after the filing of the signed duplicate statements with the board. If the indebtedness is not paid in full at the end of that thirty (30) day period the person may bring an action in court. The court action must be brought within sixty (60) days after the date of the final completion and acceptance of the public work.

SECTION 19. IC 36-1-14.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 14. Public-Private Agreements

Sec. 1. This chapter applies to the state or a political subdivision:

- (1) in a county containing a consolidated city; and
- (2) in a county where:
 - (A) the legislative body of the political subdivision; or
 - (B) if the political subdivision does not have a legislative body, the fiscal body of the political subdivision;

adopts the provisions of this chapter by resolution or ordinance.

Sec. 2. The powers conferred by this chapter shall be liberally construed in order to accomplish their purposes and shall be in addition and supplemental to the powers conferred by any other law. If any other law or rule is inconsistent with this chapter, this chapter is controlling as to any public-private agreement entered into under this chapter.

Sec. 3. The state or a political subdivision may enter into a public-private agreement with an operator under the terms of this chapter.

Sec. 4. The definitions in this section apply throughout this chapter:

- (1) "Board" means the board, commission, trustee, agent, or officer of a public agency having the power to award contracts on behalf of the public agency.



(2) "BOT agreement" means any agreement between the state or a political subdivision and an operator to construct, operate, and maintain a public facility and to transfer the public facility back to the state or political subdivision at an established future date.

(3) "Construction" means the process of building, renovating, reconstructing, expanding, modernizing, or assembling a public work including any material enhancements or upgrades to an existing public facility. The term does not include normal repair, operation, general maintenance, or preservation of a public work.

(4) "Cost" means the cost of entering into any public-private agreement, including, without limitation, the following:

(A) The cost of acquisition and construction of any public facility or any modification, improvement, or extension of that facility.

(B) Any cost incident to the acquisition of any necessary property, easement, or right-of-way.

(C) Engineering or architectural fees, legal fees, and fiscal agents' and financial advisors' fees.

(D) Any cost incurred for preliminary planning to determine the economic or engineering feasibility of a proposed public-private agreement.

(E) Costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and the inspection and supervision of the construction of any public facility and any other cost incurred by the state or political subdivision.

(5) "Operating agreement" means any agreement between an operator and the state or a political subdivision for the operation, maintenance, repair, or management of any public facility.

(6) "Operator" means a person who has entered into either an operating agreement or a BOT agreement with the state or a political subdivision to provide services to or on behalf of the state or political subdivision.

(7) "Original term" means the initial term of a public-private agreement. The term includes all automatic renewals and automatic extensions of a public-private agreement.



(8) "Person" means an association, a corporation, a limited liability company, a fiduciary, an individual, a joint stock company, a joint venture, a partnership, a sole proprietorship, or any other private legal entity.

(9) "Public agency" means:

(A) the state, its departments, agencies, boards, commissions, and institutions; and

(B) a political subdivision or any department, board, or other subdivision of a political subdivision.

(10) "Public facility" means any facility located on, or to be located on, real property owned or leased by the state or a political subdivision and upon which a public service is or may be provided.

(11) "Public funds" means money that is derived from the revenue sources of the state or a political subdivision and are deposited into a general or special fund of the state or a political subdivision. The term does not include money received by any person managing or operating a public facility under an authorized operating agreement.

(12) "Public-private agreement" means a BOT agreement or an operating agreement.

(13) "Public service" means any service customarily provided by the state or a political subdivision.

(14) "Public work" means any public building, highway, street, alley, bridge, sewer, drain, or any other public facility that is paid for out of public funds.

(15) "State" means any officer, board, commission, or other agency authorized by law to award contracts for the performance of public work on behalf of the state, except as otherwise provided in this chapter.

Sec. 5. (a) The state or a political subdivision may enter into a BOT agreement with an operator for the acquisition, planning, design, development, reconstruction, repair, maintenance, or financing of any public facility on behalf of the state or a political subdivision.

(b) BOT agreements may provide the following:

(1) The design, construction, operation, management, maintenance, or financing of the cost of a public facility shall be partially or entirely the responsibility of the operator.

(2) The state or political subdivision shall lease the public facility and real property owned by the state or political



subdivision upon which the public facility is to be located to the operator for a predetermined period. The BOT agreement must provide for ownership of all improvements by the state or a political subdivision, unless the state or a political subdivision elects to provide for ownership of the public facility by the operator during the term of the BOT agreement. In this case, ownership reverts back to the state or political subdivision upon the termination of the BOT agreement.

(3) The BOT agreement must identify which costs are to be the responsibility of the operator and which costs are to be the responsibility of the state or a political subdivision.

(4) The operator may be authorized to retain a mutually agreed upon percentage of the revenues received in the operation and management of the public facility, or the operator may be paid an established amount by the state or a political subdivision, which shall be applied as follows:

(A) Capital outlay costs for the public facility and public service plus interest and principal repayment for any debt incurred.

(B) Costs associated with the operation, management, and maintenance of the public facility.

(C) Payment to the state or political subdivision for reimbursement of the costs of maintenance, police, and other services if the services are performed by the state or a political subdivision under the BOT agreement.

(D) An agreed upon return on investment to the operator.

(5) The operator may pay the state or political subdivision either a lease payment or a percentage of gross revenue per month for the operator's operation and use of the public facility.

(6) The BOT agreement may require a performance bond and provide for the payment of contractors and subcontractors under IC 5-16.5.

(c) If the state or a political subdivision enters into a BOT agreement which involves the construction of a public facility with public funds under this section, the operator or any contractor or subcontractor engaged in the construction of that public facility shall pay the prevailing wage rate as determined under IC 5-16-7.

(d) If the state or political subdivision enters into a BOT



agreement that involves the construction of a public facility with public funds under this section, the construction of that public facility is subject to IC 36-1-12.

Sec. 6. (a) The state or a political subdivision may enter into an operating agreement with an operator for the operation, maintenance, repair, management, or any combination of operation, maintenance, repair, or management of any public facility for any public service to be performed on behalf of the state or a political subdivision.

(b) If the state or a political subdivision enters into an operating agreement that involves the construction of a public facility with public funds under this section, the operator or any contractor or subcontractor engaged in the construction of that public facility shall pay the prevailing wage rate as determined under IC 5-16-7.

Sec. 7. Records of an operator that is a party to a public-private agreement are subject to inspection and copying to the same extent the records would be subject to inspection and copying if the operator were a public agency under IC 5-14-3. This section is limited to records directly relating to the public-private agreements.

Sec. 8. Records that are provided by an operator to the state or a political subdivision that relate to compliance by the operator with the terms of a public-private agreement are subject to inspection and copying in accordance with IC 5-14-3.

Sec. 9. Under the provisions of this chapter, the state or a political subdivision may enter into a public-private agreement for an original term not to exceed five (5) years with board approval. Any public-private agreement with an original term in excess of five (5) years must be approved by the board and, if the state is a party to the agreement, the governor, and, if a political subdivision is a party to the agreement, by the fiscal body of the political subdivision.

Sec. 10. Any public-private agreement contemplated by this chapter must require the state or a political subdivision to request proposals under section 11 of this chapter before entering into the public-private agreement.

Sec. 11. (a) A request for proposal shall be prepared and administered under the provisions of this section.

(b) Proposals for public-private agreements shall be solicited through a request for a proposal, which must include the following:



(1) The factors or criteria that will be used in evaluating the proposals.

(2) A statement concerning the relative importance of price and the other evaluation factors.

(3) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(4) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(c) Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

(d) As provided in the request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(e) Eligible offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

(f) The state or a political subdivision may refuse to disclose the contents of proposals during discussions with eligible offerors.

(g) The state or a political subdivision shall negotiate the best and final offers of responsible offerors who submit proposals that are determined to be reasonably susceptible of being selected for a public-private agreement.

(h) After the best and final offers from responsible offerors have been negotiated under subsection (g), the state or a political subdivision shall either make a recommendation to the board to award the public-private agreement to an offeror or offerors or shall terminate the request for proposal process.

(i) If a recommendation to award the public-private agreement is made to the board, the board shall schedule a public hearing on the recommendation and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice shall include the following:

(1) The date, time, and place of the hearing.

(2) The subject matter of the hearing.

(3) A description of the public-private agreement to be awarded.

(4) The recommendation that has been made to award the



public-private agreement to an identified offeror or offerors.

(5) The address and telephone number of the board.

(6) A statement indicating that the proposals and an explanation of the basis upon which the recommendation is being made are available for public inspection and copying at the principal office of the board during regular business hours.

(j) The proposals and a written explanation of the basis upon which the recommendation is being made shall be delivered to the board and made available for inspection and copying in accordance with IC 5-14-3 at least seven (7) days before the hearing scheduled under subsection (i) of this section.

(k) At the hearing, the board shall allow the public to be heard on the recommendation.

(l) After the procedures required in this section have been completed, the board shall make a determination as to the most appropriate response to the request for proposals and may award the public-private agreement to the successful offeror or offerors.

(m) If the request for proposal process is terminated under subsection (h), all proposals may, at the option of the state or political subdivision, be returned to the offerors, and the state or political subdivision may refuse to disclose the contents of the offers.

Sec. 12. (a) A public-private agreement may be terminated by the board in conformity with the terms of the public-private agreement.

(b) The public-private agreement may provide for the payment of money to either party if the public-private agreement is terminated. The payments may be used in the form of liquidated damages to compensate the operator for demonstrated unamortized costs, to retire or refinance indebtedness created to improve or construct assets owned by the state or a political subdivision, or for any other purpose mutually agreeable to the operator and the state or a political subdivision.

SECTION 20. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 36-1-9-2.5; IC 36-1-12-1.4; IC 36-1-12-1.6; IC 36-1-12-2.2; IC 36-1-12-2.4; IC 36-1-12-2.6.

SECTION 21. [EFFECTIVE UPON PASSAGE] (a) Except as provided in subsection (b), IC 36-1-14.3, as added by this act, does not apply to a contract, a lease, an agreement, or an extension of a contract, a lease, or an agreement entered into



before the effective date of IC 36-1-14.3, as added by this act.

(b) This subsection applies to an agreement in the nature of a public-private agreement (as defined in IC 36-1-14.3-4) that was entered into or extended before the effective date of this SECTION. The parties to an agreement described in this SECTION may enter into an addendum of the agreement to be governed by this act and to apply the provisions of this act to the agreement. If the parties enter into an addendum under this SECTION, the addendum becomes a part of the agreement to the same extent as if the addendum had been part of the original agreement.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) IC 36-1-11 does not apply to the disposal of property to a person under an agreement between the person and a political subdivision or an agency of a political subdivision under IC 36-1-14.3, as added by this act.

(b) This SECTION expires July 1, 1995.

SECTION 23. [EFFECTIVE UPON PASSAGE] (a) This SECTION applies, notwithstanding IC 36-1-9-3, until June 30, 1995.

(b) A purchasing agent who is purchasing or leasing materials must comply with this SECTION whenever the total price of each line or class of materials to be purchased annually or total annual rental payments are:

(1) at least seventy-five thousand dollars (\$75,000) if the purchasing agent is acting on behalf of:

(A) a consolidated city or second class city; or

(B) a county containing a consolidated city or second class city;

(2) at least fifty thousand dollars (\$50,000) if the purchasing agent is acting on behalf of:

(A) a third class city or town with a population of more than five thousand (5,000); or

(B) a county containing a third class city or town with a population of more than five thousand (5,000); or

(3) at least twenty-five thousand dollars (\$25,000) if the purchasing agent is acting on behalf of a political subdivision or an agency not described in subdivision (1) or (2).

(c) Except as provided by subsection (d), a purchasing agent shall prepare specifications describing the kind and quantity of the materials needed and setting forth the requirement specified



in IC 36-1-9-8.5. The purchasing agent shall avoid specifications that might unduly limit competition. The specifications may include one (1) or more of the following conditions:

- (1) That bids will be received and contracts let, separately, for each line or class of materials.
- (2) That bids will be received and contracts let for the purchase or lease of an unspecified number of items at a fixed price per unit.
- (3) That bids will be evaluated on the basis of such factors as reliability, productivity, and the cost of maintenance and services.

(d) The following procedure may be used in lieu of subsection (c) when the purchasing agent makes a written determination that the use of subsection (c) is not feasible, and authorization is granted by the executive of the political subdivision or agency:

(1) Proposals to develop specifications shall be solicited through a request for proposals, which must include the following:

- (A) The factors or criteria that will be used in evaluating the proposals.
- (B) A statement concerning the relative importance of price and the other evaluation factors.
- (C) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.
- (D) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.
- (E) A statement that the proposal must comply with any requirement under IC 36-1-9-8.5.

(2) Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

(3) As provided in the request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

(4) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

(5) Access to the proposals under this SECTION shall be



determined under IC 36-1-14.3-11.

(e) The notice of the time and place for receiving the bids shall be given by publication in accordance with IC 5-3-1. A bidder may not be required to submit a bid before the meeting at which bids are to be received.

(f) All meetings for receiving bids must be open to the public. The bids shall be opened publicly and read aloud at the time and place designated in the notice and not before.

(g) All plans and specifications shall be kept in a place available for public inspection, which shall be specified in the notice.

(h) Except as provided in subsections (m) through (n), the purchasing agent shall, after a satisfactory bid is received, award a contract to the lowest responsible and responsive bidder for each line or class of materials required. —

(i) If a contract awarded under subsection (h) is not awarded to the lowest bidder, the factors used to:

- (1) determine which bidder is the lowest responsible and responsive bidder; and
- (2) justify that award;

must be stated in the minutes or memoranda at the time the award is made. A copy of the minutes or memoranda must be kept available for public inspection.

(j) In determining whether a bidder is responsive, a purchasing agent may consider the following factors:

- (1) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.
- (2) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
- (3) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

(k) In determining whether a bidder is a responsible bidder, a purchasing agent may consider the following factors:

- (1) The ability and capacity of the bidder to provide the materials.
- (2) The integrity, character, and reputation of the bidder.
- (3) The competency and experience of the bidder.

(l) The purchasing agent may reject all bids and ask for new bids. If no valid bids are received for an item, the purchasing agent may purchase or lease that item on the open market



without further advertisement for bids.

(m) Notwithstanding subsection (h), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if:

- (1) the specifications allow for bids to be based upon service to specific geographic areas; and
- (2) the contracts are awarded by geographic area.

The geographic areas do not need to be described in the specifications.

(n) A school corporation shall, after a satisfactory bid is received, award a contract to the lowest and the best responsible and responsive bidder in the opinion of the school corporation for each line or class of materials required. However, if a contract awarded under this subsection is not awarded to the lowest bidder:

- (1) the factors used to justify the award must be stated in the minutes or memoranda at the time the award is made; and
- (2) a copy of the minutes or memoranda must be kept available for public inspection.

(o) This SECTION expires June 30, 1995.

SECTION 24. An emergency is declared for this act.



*Revision
1/19/91*

President of Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana



The City of Fort Wayne

Paul Helmke, Mayor

To: Common Council Members

From: Dee Densel, Director
Purchasing Services *Dee*

Date: June 20, 1995

Subject: Purchasing Procedures

92-95-06-20

Background

Indiana State Legislature '95 session has made several changes to purchasing rules and regulations. These changes are reflected in the attached ordinance.

Indiana Code 36-1-9-3 has been amended to allow a consolidated city or a second class city to raise the bid level from \$25,000 to \$75,000 for each line or class of material to be purchased annually. This section also gives cities the opportunity to accept faxed bids from vendors, if the procedures for receiving faxes is listed in the legal notice to bid and if the fax machine receiving the bid has a security feature that protects the content of an electronic bid to the same extent as the content of a sealed bid.

Indiana Code 36-1-9-4 has been amended requiring a purchasing agent, when purchasing materials costing \$25,000 but less than \$75,000 to invite quotes from at least three persons known to deal in the lines or classes of materials by mailing them a copy of the specifications for the materials to be purchased.

Purchasing Procedure

Currently the procedure for purchasing over \$25,000 is to advertise twice in both newspapers with the bid opening 10 days after the last advertisement. This procedure would now take place for all purchases and/or leases over \$75,000. Purchasing will now be allowed to accept faxed bids - once we have in place a "Fax on Demand" which will have the capability of not only receiving faxed bids from vendors, but will allow vendors to have the bid faxed to their fax machine. Instructions will be included with the advertisement on how to contact the City Purchasing fax line. Information will be included with the bid on how to fax the bid back to the confidential mailbox which will hold all bids until the advertised opening time. This "Fax on Demand" system will lead the caller through the procedures on how to access the system step by step.

The administrative procedures for purchases from \$25,000 but less than \$75,000 would basically remain the same. This is the procedure that is now in place for items over \$25,000 (the bid procedure) except we would no longer advertise the need to purchase such items.

In 1994, we did 116 bids with advertising costs incurred of approximately \$5,000 with 1/4 of the bids over \$75,000. With the increase of the bid level to \$75,000 a cost savings in advertising would be realized of approximately \$3,500, however the more significant cost savings would be in time incurred procuring the needed goods and services requested. Departments would get what they needed in a shorter period of time.

We price shop with more than the required three vendors and would continue to do so. We work from a computer system that has all the vendors listed by the commodity that they sell. Whatever we are buying, we pull up the names of all the vendors that sell that commodity and ask for prices from those vendors. Our vendor community is kept on file for 18 months and then only deleted if that vendor has no activity on their file for 18 months. The more vendors we involve, the more competitive the vendors become, the more dollars we save. This would remain a closed procedure whether accepted in a sealed envelope or received via fax to confidential mailbox, which would be pulled at the appropriate time. Vendors must be given seven days to prepare the price quote.

Purchasing's policy for procuring goods and services less than \$25,000 is as follows:

(1) The procurement will be competitively quoted either through the written, verbal or fax quote process. Whether the quote is verbal, written or faxed depends on the complexity of the specifications and the dollar amount of the requisition.

(2) As a rule of thumb, the procurement policy is as such:

\$1 - \$500	Department's may purchase and make a direct payment without requiring a purchase order.
\$501 - \$1,000	Department's choice of vendor. Price will be verified by buyer, but materials will not be price shopped further.
\$1,001 - \$5,000	Verbal or fax quote to a minimum of three vendors.
\$5,000 - \$25,000	Written or fax quotations to a minimum of three vendors.

Recommendation

The Purchasing Department recommends passage of the ordinance in order to be responsive to state law. The passage of this ordinance will lessen the time it takes to purchase goods and services over \$25,000 because of the requirement for legal advertising, taking the time frame from 24 days down to 7. The restraints remain the same allowing for competitive purchasing while being fair and equitable to the vendor community.

DIGEST SHEET

TITLE OF ORDINANCE GENERAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE PURCHASING

SYNOPSIS OF ORDINANCE 1. City purchasing procedures established to comply with Indiana Code 36-1-9-3 which increases the bid level for purchasing and leasing to \$75,000.00; 2. City purchasing procedures established to comply with Indiana Code 36-1-9-4 which requires at least (3) quotes be obtained for the purchase of materials costing \$25,000 - \$75,000.

EFFECT OF PASSAGE PURCHASING DEPARTMENT WILL BE IN COMPLIANCE WITH I.C. 36-1-9-3 AND I.C. 36-1-9-4.

EFFECT OF NON-PASSAGE PURCHASING DEPARTMENT WILL NOT BE IN COMPLIANCE WITH I.C. 36-1-9-3 AND I.C. 36-1-9-4.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS)

ASSIGNED TO COMMITTEE (PRESIDENT)